IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5.1.2007

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.1604 & 1608 of 2003

Jagadeesh Prasad .. Petitioner in both C.R.Ps. (T)

vs.

K.Kuppusamy .. Respondent in both C.R.Ps.

Civil Revision Petition No.1604/2003 has been filed against the order of VIII Judge, Small Causes Court, Chennai made on 27.8.2003 in MP No.446/2001 in R.C.A.No.369/2001 in RCOP No.1932/1999 and C.R.P.No.1608/2003 has been filed against the order of VIII Judge, Small Causes Court, Chennai made on 1.8.2003 in M.P.No.737/2001 in RCA No.369/2001 in RCOP No.1932/1999.

For Petitioner : Mr.Amarchand
For Respondent : Mr.G.Sukumaran

COMMON ORDER

Civil Revision Petition No.1604/2003 has been filed against the order of VIII Judge Small Causes Court, Chennai made on 27.8.2003 in R.C.A.No.369/2001 in RCOP No.1932/1999.

2.C.R.P.No.1608/2003 has been filed against the order of VIII Judge, Small Causes Court, Chennai made on 1.8.2003 in M.P.No.737/2001 in RCA No.369/2001 in RCOP No.1932/1999.

3.The brief facts are as under:

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The respondent herein filed RCOP No.1932/1999 against the revision petitioner/tenant under Sec.10(2)(i) and 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the Act). By order dated 22.3.2001 the rent controller allowed the RCOP and ordered eviction of the revision petitioner. Aggrieved by the order of the rent controller the revision petitioner filed RCA No.369/2001 and pending RCA No.369/2001, the respondent as landlord filed M.P.No.737/2001 under Sec.11(4) of the Act and by order dated 1.8.2003, the appellate authority directed the revision

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petitioner/tenant to deposit a sum of Rs.20,200/- on or before 20.8.2003 failing which M.P.No.737/2001 would be allowed. The revision petitioner filed another M.P.No.523/2003 in RCA No.369/2001 praying to extend the time by 3 weeks for deposit of rental arrears of Rs.20,200/- as per order dated 1.8.2003. By order dated 27.8.2003, M.P.No.523/2003 was dismissed by the appellate authority. As the previous order dated 1.8.2003 was not complied with, M.P.No.737/2001 was allowed by the appellate authority on 27.8.2003 and consequently further proceedings were stopped in RCA No.369/2001 and the same was also dismissed on 27.8.2003. Aggrieved by the order dated 27.8.2003, in M.P.No.737/2001 in RCA No.369/2001, the tenant has filed CRP No.1608/2003 and against the consequent order dated 27.8.2003, in RCA No.369/2001 CRP No.1604/2003 was filed.

4.It is the case of the landlord, the respondent herein in RCOP No.1932/1999 that from July 1997 onwards, the revision petitioner/tenant has not paid the monthly rent of Rs.350/- in spite of his notice dated 10.9.1999. Thus wilful default was alleged against the revision petitioner/tenant in payment of rent from July 1997 to August 1999. It is the further case of the respondent/landlord that he required the portion under the occupation of the revision petitioner/tenant by way of additional accommodation as the respondent is also carrying on business in the portion of the same building.

5.The revision petitioner/tenant resisted the eviction petition by contending that he paid the rents up to September 1999 to the brother of the respondent/landlord by name Manoharan. While admitting that respondent/landlord is also carrying on business in a portion of the petition premises, the revision petitioner/tenant stated that the alleged requirement of the respondent/landlord is not bonafide.

6.The rent controller after going through the evidence adduced before him held that the contention of the revision petitioner/tenant that the respondent is not his landlord cannot be accepted. The rent controller has also referred to the fact that there is no evidence to prove that the revision petitioner/tenant has asked the respondent/landlord to pay the rent to his brother Manoharan and no receipts from Manoharan were also received by the revision petitioner/tenant. The rent controller has also considered the suit filed by the respondent/landlord in O.S.No.6761/1995 and the order passed in O.S.No.6761/1995 directing that the rent should be paid only to the respondent herein and not to anyone else. The revision petitioner/tenant is also a party in the above suit which was decreed exparte on 30.7.1997. Therefore the rent controller held that the revision petitioner/tenant committed wilful default even after suffering a decree on 30.7.1997.

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7.Insofar as the question of additional accommodation is concerned, after adducing the evidence, the rent controller found that a case has been made out by the respondent/landlord and ordered eviction on that ground also.

8.It is not in dispute that appeal was filed in RCA No.369/2001 by the revision petitioner/tenant against the eviction order and pending appeal respondent/landlord filed M.P.No.737/2001 under Sec.11 (4) of the Act praying to direct the revision petitioner/tenant to pay the arrears of rent of Rs.18,700/- (from July 1997 to October 2001) failing which to stop all further proceedings in the appeal. This petition was resisted by the revision petitioner/tenant by contending that there is no landlord-tenant relationship and the exparte decree obtained by the landlord cannot be enforced. According to the revision petitioner/tenant that he has paid rent up to September 1999 to Manoharan, the brother of the respondent/landlord. Therefore the revision petitioner/tenant questioned the claim of the respondent/landlord to get arrears of rent from him in 11(4) petition.

9.The appellate authority after holding that whether there is landlord-tenant relationship and whether there is any wilful default are the questions that could be gone into at the time of appeal, directed the revision petitioner/tenant to pay a sum of Rs.25,200/- being the rental arrears from July 1997 to June 2003 on or before 20.8.2003. The appellate authority on 27.8.2003 dismissed M.P.No.523/2003 filed by the revision petitioner/tenant to extend the time by 3 weeks for deposit of rental arrears as per the order dated 1.8.2003 on the ground that already sufficient time extended in M.P.No.501/2003. As the conditional order was not complied with by the revision petitioner/tenant, the appellate authority allowed M.P.No.737/2001 and consequently dismissed RCA No.369/2001. Hence the above Civil Revision Petitions by the tenant.

10.The learned counsel for the petitioner strenuously contended that the order of the appellate authority dated 1.8.2003 in M.P.No.737/2001 is contrary to the law declared by this court and therefore the same is to be set aside and the entire matter to be remanded to the appellate authority for deciding the M.P.No.737/2001 afresh. The learned counsel contended that when the tenancy is in dispute, until it is established that the person is a tenant, he cannot be called upon to shoulder the burden imposed by Sec.11(4) of the Act. Therefore according to him the appellate authority ought to have gone into the question whether there is a relationship of landlord-tenant between the parties before directing the revision petitioner to deposit the rental arrears. In support of his submissions, he relied on the following decisions:

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1)1957(2) M.L.J. 513 (Abdul Azeez Khan v. Appachi Gounder)
2)1963(2) SCJ 475 (Om Prakash Gupta v. Dr.Rattan Singh)
3)93 L.W. 484(Kesava Naicker v. Sivagnana Mudaliar)

11.Per contra the learned counsel for the respondent has submitted that it is a simple case of the tenant failing to comply with the conditional order under Sec.11(4) of the Act and therefore once the arrears are not paid, the provisions of the Act will hold the field and all further proceedings are to be stopped in the appeal. Therefore according to the learned counsel for the respondent/landlord the appellate authority has rightly decided the issue and the same need not be interfered with by this court under Sec.25 of the Act. In support of his submissions, learned counsel for the respondent relied on the following decisions:

1)1998(2) L.W. 245 (Arputham v. Singarayan Nadar)
2)1991(2) L.W.614 (Pichai Chetty (died) and 5 others v. N.K.Muthukrishnan
3)Order dated 3.4.2003 in CRP (NPD) No.1682/2002

12.I have considered the rival submissions carefully with regard to facts and citations.

13.The only question that arises for consideration is whether the appellate authority has correctly decided the petition filed by the respondent/landlord in M.P.No.737/2001 under Sec.11(4) of the Act.

14.Sec.11 of the Act reads as under:

> "11.Payment or deposit of rent during the pendency of proceedings for eviction:- No tenant against whom an application for eviction has been made by a landlord under Section 10 shall be entitled to contest the application before the Controller under that Section, or to prefer any appeal under Section 23 against any order made by the Controller on the application, unless he has paid or pays to the landlord, or deposits with the Controller or the Appellate authority, as the case may be, all arrears of rent due in respect of the building up to the date of payment or deposits, and continues to pay or to deposit any rent which may subsequently become due in respect of the building until the termination of the proceedings before the Controller or the appellate Authority, as the case may be.
>
> (2)The deposit of rent under sub-section(1)

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shall be made within the time and in the manner prescribed.

(3)Where there is any dispute as to the amount of rent to be paid or deposited under sub-section(1) the Controller or the appellate Authority, as the case may be, shall, on application made to him either by the tenant or by the landlord, and after making such inquiry as he deems necessary, determine summarily the rent to be so paid or deposited.

(4)If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the Appellate Authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

(5)The amount deposited under sub-section(1) may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him in that behalf to the Controller or the Appellate Authority, as the case may be."

15.From the above it is very clear that it is the duty of the tenant to pay all arrears of rent while preferring an appeal under Sec.23 against the order of eviction passed by the rent controller under Sec.10 of the Act. If the tenant has not deposited the arrears of rent in the appeal proceedings as stated above, the landlord can take out an application before the appellate authority asking the tenant to pay the rental arrears and if an order is passed calling upon the tenant to pay the rental arrears, the same has to be complied with or else all further proceedings in the appeal has to be stopped and an order directing the tenant to put the landlord in possession of the building is to be passed by the appellate authority.

16.There is no difficulty in following Sec.11 when the tenancy is admitted. But what is the position when the tenancy is denied and disputed. In such circumstances, some adjudication has to be undertaken to find out the relationship between the landlord and tenant.

17.In the case on hand, it was already adjudicated by the rent controller that the denial of landlord-tenant relationship is not bonafide and in fact there is a decree in O.S.No.6761/1995 filed by the respondent/landlord for a permanent injunction restraining the defendants in the suit (the revision petitioner is also one of the

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defendants) not to pay the rent to any one except to respondent/landlord. It is an admitted position that neither steps were taken to set aside the exparte decree nor an appeal was filed against the same. Therefore it is very clear that a duty is cast upon the revision petitioner/tenant to deposit the rent at the time of pursuing the appeal remedy. When the amount was not deposited, M.P.No.737/2001 was filed and the appellate authority directed the revision petitioner/tenant to deposit the rent.

18.The main ground urged by the revision petitioner/tenant is that the appellate authority ought to have adjudicated the relationship of landlord-tenant before passing that order and as it was not done the matter is to be remanded to the appellate authority.

19.In 1957(2) M.L.J 513 (cited supra), this court held as follows:

> "In this case, as I have already pointed out, the Controller came to the conclusion, that the denial of title was not bona fide. If the denial of title had been bona fide, the parties would have had to be referred to a Civil Court to determine the question of title.
>
> Section 7-A runs:-
>
> "No tenant against whom an application for eviction has been made by a landlord under section 7, shall be entitled to contest the application before the Controller under that section, or to prefer any appeal under section 12 against any order made by the Controller on the application, unless he has paid or pays to the landlord, or deposits with the Controller or the appellate authority, as the case may be, all arrears of rent due in respect of the building up to the date of payment or deposit..."
>
> The disability imposed by section 7-A is against the tenant. In these proceedings the question whether the respondent is a tenant at all of the petitioners, was in issue all through. It is not as if section 7-A(1) read:
>
> No person against whom an application for eviction also been made etc.
>
> As I said, the disability attaches itself only to a tenant. The eviction of a tenant can be sought on various grounds, the grounds enumerated in section 7(2) of the Act. In many of these cases the question of tenancy itself may not be in dispute. It may be possible to envisage cases,

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even under section 7(2)(vi) of the Act, where the tenancy as such is not in dispute but the title of the person seeking eviction is denied. But where in addition to, or independent of the denial of the petitioner's right as owner to evict, the person sought to be evicted denies his own status as a tenant, it is rather difficult to say he will come within the scope of section 7-A(1), that is, within the scope of the expression "tenant". If the tenancy is admitted, there can be no difficulty. If the tenancy had already been adjudicated upon and is therefore no longer in issue, the position would be the same. But where the tenancy is disputed, until it is established that the person is a tenant, he cannot be called upon to shoulder the burden imposed by section 7-A (1) of the Act. In these proceedings, as I said, the status of the respondent as tenant has yet to be adjudicated upon. It is still in issue.

The learned counsel for the petitioners urged that there was a finding of the Rent Controller that the respondent was a tenant, and that was sufficient to bring the respondent within the scope of section 7-A(1) as far as the appeal before the learned Subordinate Judge was concerned. I am unable to accept this contention. The appeal is a continuation of the original proceedings initiated before the Rent Controller. If the question of tenancy was no longer in issue in appeal, no doubt there is scope for arguing that section 7-A(1) would apply if eviction had been sought on other grounds and ordered. But, as I said, in this case the tenancy, that is, the status of the respondent as a tenant, was very much in issue even before the appellate Court. Till that status was determined and till he was adjudged a tenant, there can be no question of calling upon him to deposit whatever was lawfully due within the meaning of section 7-A(1).

The view taken by the learned District Judge that section 7-A(1) did not apply and the application had to be disposed of on the merits is right. This petition is dismissed with costs."

19.No doubt in the above decision this court held that till the relationship of the landlord-tenant is determined and till the tenant is adjudged as a tenant, there can be no question of calling upon the tenant to deposit.

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20.In 1963(2) SCJ 475 (cited supra), the Hon'ble Supreme Court in case arising under Delhi Rent Control Act held that there is no substance in the contention that as soon as the tenant denied the relationship of landlord and tenant, the jurisdiction of the authorities under the Act was completely ousted.

21.In 93 L.W. 484 (cited supra), this court following the above Supreme Court judgment held as follows:

> "8. ... Therefore, in dealing with an application under S.11 of the Act, where the relationship of landlord and tenant is admitted, no difficulty arises. But even in cases where such relationship is disputed, the Rent Controller has to adjudicate upon the relationship and pass appropriate orders but cannot throw out the application on the ground that there is a disputed relationship. Apart from the jurisdictional objection referred to and dealt with already, the learned counsel for the petitioner has not assailed the order of the Rent Controller, under Sec.11(4) of the Act in any other manner. Neither the Rent Controller nor the Appellate Authority did act in an erroneous manner when they proceeded to determine the true relationship of the petitioner and the respondent in the course of M.P.No.47/1978 under Sec.11 of the Act. Indeed, as stated earlier, it is the duty of the Rent Controller to decide this question before dealing with an application under Sec.11 of the Act and precisely this had been done in the instant case and it has been held that originally, the wife of the respondent was the landlord of the petitioner and that on her death, the respondent had succeeded to her interest and had become the landlord of the property. The relationship having been thus found, the order for deposit of the rents by the tenant was correctly passed and the correctness of that order, as seen earlier, cannot be assailed merely on the ground that the relationship between the petitioner and the respondent is not that of tenant and landlord. It is not in dispute that the amount directed to be paid by the Rent Controller by his order, dated 3rd August, 1978 had not been deposited within the time granted by the Rent Controller. Consequently, the procedure adopted by the Rent Controller under Sec.11 (4) of the Act and the confirmation thereof by the Appellate Authority

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are unexceptionable. The orders of the authorities below are, therefore, perfectly correct and do not suffer from any illegality or impropriety. The civil Revision Petition is, therefore, dismissed. No costs."

22.In the above decision this court held that in dealing with an application under Sec.11 of the Act where relationship of landlord and tenant is disputed, Rent Controller has to adjudicate upon the relationship and pass appropriate orders, but cannot throw out the application on the ground that there is a disputed relationship.

23.Citing the above decision learned counsel for the revision petitioner/tenant submitted that as the relationship of landlord-tenant was not adjudicated by the appellate authority before passing the order to deposit the rent, in M.P.No.737/2001, the order is to be set aside and remanded to the appellate authority for fresh disposal.

24.I am unable to accept the above submission of the learned counsel for the revision petitioner/tenant.

25.The facts in the above revision petitions are peculiar and unique. First of all in the counter statement filed by the revision petitioner in RCOP No.1932/1999, it was not specifically denied that the respondent is not the landlord. It is specifically stated that he was a tenant under the father of the respondent and it was admitted that after the death of the father all the legal heirs including the respondent are entitled to collect the rent from him. It is the tenant's further case that he was paying the rent to the brother of respondent at the request of the respondent. The revision petitioner/tenant has also admitted that he is a party defendant in O.S.No.6761/1995 and he is also aware that an exparte decree was passed on 30.7.1997 for a permanent injunction restraining the defendants including the revision petitioner/tenant, from paying the rent to anyone except to respondent herein. In such circumstances, there is no question of denial of tenancy by the revision petitioner/tenant. In view of peculiar facts as stated above, the revision petitioner/tenant cannot rely on the above decision to contend that there should have been an adjudication by the appellate authority before directing him to deposit the rental arrears. Further when the respondent has claimed the rent by sending a notice and once the revision petitioner/tenant suffered a decree, either he should have paid the rental arrears to respondent/landlord or ought to have taken steps under Sec.9(3) of the Act to deposit the rent before the authority. Therefore I find no bonafide on the part of the revision petitioner/tenant on his failure to deposit the rent as directed by the appellate authority.

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26.In 1988(2) L.W. 245(cited supra), this court held as follows:

"3.In this revision petition it is argued that the Rent Controller did not pass an order under S.11 (4) of the Act in I.A.15 of 1986 which was the application filed under S.11 by the landlords. It is contended that the requirement of section could be satisfied only by passing a separate order in the application and passing a consequential order thereafter in the main R.C.O.P. It is argued that the Rent Controller passed the order under S.11(4) in the main R.C.O.P., straight away, instead of passing a separate order in the interlocutory application and then passing a consequential order in the R.C.O.P. I do not see any substance in this argument advanced on behalf of the petitioner. The section does not prescribe any such requirement as contended by learned counsel for the petitioner. S.11(4) of the Act is in the following terms:

"If any tenant fails to pay or deposit the rent as aforesaid, the Controller or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building."

As per the wording of the section, the only order that has got to be passed by the Rent Controller, after satisfying himself that the arrears of rent had not been deposited as directed by the order under S.11(3) and that the tenant did not show any sufficient cause for his default, is it can stop all further proceedings and directing the tenant to put the landlord in possession of the building. Obviously that order has to be passed only in the main eviction petition. The Rent Controller has done that in this case.

4.It is also contended that the appellate authority is in error in confirming the order of eviction when the tenant had deposited the entire amount in the appellate court at the time when he filed the appeal. I do not agree with learned counsel for the petitioner. Once the petitioner failed to deposit as directed by the Rent Controller, an order under S.11(4) would automatically follow and the Rent Controller made

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no error in passing that order. Consequently, the appellate authority was right in confirming that order."

27.From the above decision it is very clear that once the petitioner failed to deposit the rent as directed by the rent controller an order under S.11(4) would automatically follow.

28.In 1991(2) L.W. 614 (cited supra), this court held that the deposit of arrears of rent is a condition precedent for filing an appeal against the order of eviction passed under Sec.10 of the Act.

29.In CRP No.1682/2002 on 3.4.2003, between the same parties this court observed as follows:

"7.I am of the view that there is some force in the contention raised by the revision petitioner. It is pertinent to point out that even after filing of the eviction petition, the respondent has not paid the rent. He is occupying the property without payment of rent. The order passed by the Appellate Authority that disposal of 11(4) petition would amount to disposal of rent control appeal itself, is not a proper approach. It is the duty of the tenant, who is in occupation of the property, either to pay the rent or deposit the same into the court. He cannot occupy the property without paying the same or depositing the same. In the circumstance, it is just and necessary that the matter has to be remitted back to the Appellate Authority with a direction that the petition filed under section 11(4) of the Rent Control Act has to be disposed of without delay."

30.In the above decision this court has clearly held that it is the duty of the tenant who is in occupation of the property either to pay the rent or to deposit the same into court and he cannot occupy the property without paying the same or depositing the same.

31.In view of the above decisions, it is very clear that the tenant cannot be in occupation of a property unless he pays rent to the landlord or deposits the same in the court. In the present case, the appellate authority has only directed the revision petitioner/tenant to deposit the rent into court and not to pay directly to the respondent. In such circumstances, no prejudice would be caused to the revision petitioner as the money is only deposited into the court when the appeal proceedings are in progress.

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The revision petitioner/tenant cannot contend that he would neither deposit the money in the court nor pay it to any one and still he can continue to occupy the property till the rent control proceedings are ultimately over.

32.Yet another reason to reject the case of the revision petitioner is that after suffering the order in M.P.No.737/2001, he did not come before this court immediately challenging the same. In fact, he filed 2 petitions in M.P.No.501/2003 and 523/2003 for extension of time for depositing the rental arrears. If that being so, the revision petitioner has already acquiesced with the order passed in M.P.No.731/2001 directing him to pay the rental arrears of Rs.20,200/- as per order dated 1.8.2003. Time was extended in M.P.No.501/2003. The petition to extend the time in M.P.No.523/2003 was dismissed on 27.8.2003. Admittedly, this order refusing to extend the time was not challenged before this court. It is obvious from the conduct of the petitioner that he was only buying time before the appellate authority under the guise of filing petition for extension of time before challenging the order dated 1.8.2003 in M.P.No.737/2001. Therefore it is to be held that by filing two time extension petitions, in M.P.No.501/2003 and M.P.No.523/2003, the petitioner is estopped from challenging the order passed in M.P.No.737/2001.

33.In the result, I find no merits in both the Civil Revision Petitions and hence they are dismissed. No costs. Connected C.M.P.Nos.17007 and 17008 of 2003 are also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Registrar, Court of Small Causes, Chennai.104.

2.The Record Keeper,
VR Section, High Court, Madras.

+2ccs to Mr.G.Sugumaran,Advocate Sr 984,983

+1cc to Mr.K.Amarchand, Advocate Sr 935

GM (CO)
km/25.1.

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